

### REMARKS

Claims 16-20 are currently pending. Claims 16-18 are amended herein. The amendments to Claims 16-18 add no new matter and are fully supported in the specification. Reconsideration and allowance of these Claims are respectfully requested.

### Drawings

The Examiner objected to the drawings as not showing features of the invention that are specified in the Claim. The Claims have been amended in a manner that renders the Examiner's objection to the drawings moot. The Applicants thus respectfully submit that all of the features of the invention specified in the Claims are indeed shown in the drawings. As such, the Applicants respectfully request the withdrawal of the objections to the Claims.

### 112(1) Rejections

The Examiner rejected Claim 16 under 35 U.S.C 112, first paragraph as failing to comply with the enablement requirement because "the limitation of 'an existing network application software' cannot be found in the main body of the specification." The Applicants respectfully disagree. This language is clearly set forth in Applicants' specification in the third paragraph of the summary section. Consequently, the withdrawal of the 112 rejection made on the basis of non-enablement is respectfully requested.

The Examiner rejected Claim 17 under 35 U.S.C 112, first paragraph as failing to comply with the enablement requirement because "the main body of the specification does not suggest a view of any type." The Applicants respectfully disagree. This language is clearly set forth in Applicants' specification in the first paragraph of the summary section. Consequently, the withdrawal of the 112 rejection made on the basis of non-enablement is respectfully requested.

Additionally, the Examiner rejected Claims 18 and 20 for failing to comply with the enablement requirement. Claim 18 was previously amended in a manner that renders the its rejection. With regard to Claim 20 the language “selected from the group consisting of” is conventional Markush group language that is proper under recognized patent law principles. Consequently, the Applicants request the withdrawal of the rejections of Claims 18 and 20 under 35 U.S.C. 112 first paragraph.

#### 112(2) Rejections

The Examiner rejected Claim 16 under 35 U.S.C 112, second paragraph as failing to particularly point out and distinctly claim the invention. The Examiner alleges that the terms “and/or” renders Claim 16 indefinite and suggests that Applicants use “and” as an alternative. The Applicants respectfully disagree and reminds the Examiner that the use of alternative language such as “or” is not improper (see MPEP 2173.05(h)). Additionally, it should be noted that the claim is definite as the metes and bounds of the claim are clearly set forth. In fact, there is only three possibilities for “and/or” which are easily ascertainable and thus are indeed definite: (1) “and”, (2) “or”, or (3) both “and” and “or”. Consequently, the withdrawal of the 112(2) rejection is respectfully requested.

Additionally, the Examiner objected to other aspects of Claim 16 that the Examiner contends renders Claim 16 indefinite. Claim 16 has been amended in a manner that renders these objections moot. Consequently, the Applicants respectfully request the withdrawal of the rejection of Claim 16 under 35 U.S.C. 112(2).

Claim 17 has been amended in a manner that renders the 112(2) rejection of this Claim moot. Consequently, the Applicants respectfully request the withdrawal of the rejection of Claim 17 under 35 U.S.C. 112(2).

The Examiner rejected Claim 20 under 35 U.S.C 112, second paragraph as failing to particularly point out and distinctly claim the invention. In Claim 20 the language “selected from the group consisting of” is basic Markush group language that is proper under recognized patent law principles. Consequently, the Applicants request the withdrawal of the rejections of Claim 20 under 35 U.S.C. 112 second paragraph.

### 103 Rejections

Claims 16 is rejected under 35 U.S.C. § 103(a) as being unpatentable over by Raab et al. (U.S. Patent No. 6,047,321) in view of Desai et al. (U.S. Patent No. 5,781,703). Applicants have reviewed the recited references and respectfully submit that the present invention as is recited in Claim 16 is neither anticipated nor rendered obvious by Raab et al. in view of Desai et al.

The Examiner is respectfully directed to independent Claim 16. The Claim 16 embodiment includes:

...deploying dRMON agents that communicate with a dRMON proxy within ESs to be monitored, said dRMON agents implementing RMON functional groups but only capturing and analyzing packets that their native ES sends or receives; on a periodic basis having the dRMON agents forward statistics and/or captured packets to a dRMON proxy, existing somewhere on the LAN...

Raab et al. does not anticipate nor render obvious a method for distributed remote network monitoring comprising, “deploying dRMON agents that communicate with a dRMON proxy within ESs to be monitored said agents implementing RMON functional groups but only capturing and analyzing packets that their native ES sends or receives.” Raab et al. only discloses a method and apparatus for monitoring a dedicated communications medium in a switched data network. As such, Raab et al. is only concerned with the monitoring of the medium between network connected devices and not the network connected devices themselves. In fact, Raab et al. teaches at column 4, lines 33-37 that his disclosed system monitors the traffic patterns “between workstations.” Nowhere, does the Raab et al. reference show or suggest monitoring data in end systems (ESs) as is recited in applicants Claim 16.

Desai et al. does not teach or suggest a modification of Raab et al that would remedy the deficiencies of Raab et al. noted above. More specifically, even if the Examiners allegations regarding the teachings of the Desai reference are correct (that Desai teaches deploying dRMON agents within ESs; see Office Action page 7), the combination of Raab et al. and Desai et al. would not render the current invention obvious within the meaning of 35 U.S.C. 103 as Raab et al. clearly teaches (as is indicated above) that the disclosed system is concerned with monitoring the medium that connects network devices. As such, Raab et al. sharply teaches away from employing components of a system (such as that disclosed by Desai et al.) that feature attributes incompatible with this concept. Moreover, it has been held that the teachings of a reference are not sufficient to render an invention obvious where the “suggested combination of references would require a substantial reconstruction and redesign of the elements shown in the primary reference as well as a change in the basic principle under which the construction was designed to operate.” *In re Ratti*, 270 F.2d. 810, 123 USPQ 349

(CCPA). Consequently, Desai et al. and Raab et al., either alone or in combination, do not anticipate or render obvious the Applicants' invention as is set forth in Claims 16.

Therefore, Applicants respectfully submit that Claim 16 overcomes the Examiners basis for rejection under 35 U.S.C. 103(a). Accordingly, Applicants submit that Claim 16 is in condition for allowance.

Claims 17 and 18 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Raab et al. (U.S. Patent No. 6,047,321) in view of Desai et al. (U.S. Patent No. 5,781,703) in further view of Dobbins et al. (U.S. Patent 5,790,546). Dobbins et al. does not teach or suggest a modification of Raab et al. and Desai et al. that would remedy the deficiencies of Raab et al. and Desai et al. outlined above. Nowhere, does the Dobbins et al. reference show or suggest monitoring data in end systems (ESs) in the manner recited in applicants Claim 16. Consequently, Raab et al. in view of Desai et al. in further view of Dobbins et al. does not anticipate or render obvious the applicants invention as is recited in the Claims.

Claim 19 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Raab et al. (U.S. Patent No. 6,047,321) in view of Desai et al. (U.S. Patent No. 5,781,703) in further view of Umetsu (U.S. Patent 5,751,963). Umetsu does not teach or suggest a modification of Raab et al. and Desai et al. that would remedy the deficiencies of Raab et al. and Desai et al. outlined above. Nowhere, does the Umetsu reference show or suggest monitoring data in end systems (ESs) in the manner recited in applicants Claim 16. Consequently, Raab et al. in view of Desai et al. in further view of Umetsu does not anticipate or render obvious the applicants invention as is recited in the Claims.

Claims 20 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Raab et al. (U.S. Patent No. 6,047,321) in view of Desai et al. (U.S. Patent No. 5,781,703) in further view of Nugent et al. (U.S. Patent 6,076,131) in further in view of Engel et al. (U.S. Patent No. 6,115,393). Nugent et al. further in view of Engel et al. does not teach or suggest a modification of Raab et al and Desai et al. that would remedy the deficiencies of Raab et al. and Desai et al. outlined above. Nowhere, does either the Nugent et al. or Engel et al. references show or suggest monitoring data in end systems (ESs) in the manner recited in applicants Claim 16. Consequently, Raab et al. in view of Desai et al. in view of Nugent et al. and further in view of Engel et al. does not anticipate or render obvious the applicants invention as is recited in the Claims.

#### Conclusion

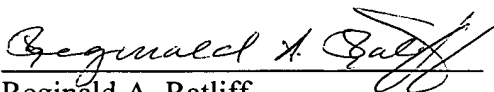
In light of the above-listed amendments and remarks, Applicants respectfully request allowance of the remaining Claims.

The Examiner is urged to contact Applicants' undersigned representative if the Examiner believes such action would expedite resolution of the present Application.

Respectfully submitted,

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